



NV02006-AC

United States
Department of
Agriculture

CERTIFIED RECEIPT REQUESTED

Office of
Administrative
Law Judges

December 21, 2010

Hearing Clerk

Karl Mitchell
P. O. Box 1085
Pahrump, Nevada 89041

Room 1031
South Building

1400 Independence
Avenue SW

Dear Sir / Madam:

Washington, DC
20250-9200

Subject: In re: Karl Mitchell, an individual, and Big Cat Encounters, a
Nevada corporation, Respondents - AWA Docket No. 09-0084

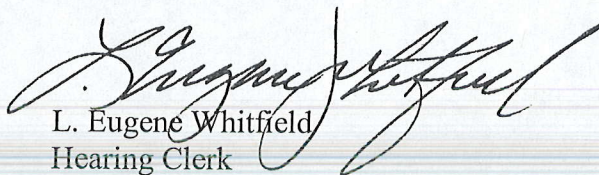
(202) 720-4443
(202) 720-9776 fax

Enclosed is a date-stamped copy of the decision and order issued by the Judicial Officer on the Secretary's behalf in the above-captioned proceeding.

Judicial review of this decision is available in an appropriate court if an appeal is timely filed. This office does not provide information on how to appeal. Please refer to the governing statute. If you are not currently represented by an attorney, you may choose to seek legal advice regarding an appeal.

Prior to filing an appeal, you may file a petition for reconsideration of the Judicial Officer's decision within 10 days of service of the decision. An original and three copies of the petition for reconsideration must be filed with this office.

Sincerely,


L. Eugene Whitfield
Hearing Clerk

Enclosure(s)

Sent to: Colleen A. Carroll, OGC
Ruth Ann McDermott, APHIS

caa: 12/21/2010

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 09-0084
)	
Karl Mitchell, an individual; and)	
Big Cat Encounters, a Nevada)	
corporation,)	
)	
Respondents)	Decision and Order

PROCEDURAL HISTORY

On March 27, 2009, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding by filing a Complaint. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151).

On June 1, 2009, the Administrator filed an Amended Complaint, and on January 22, 2010, the Administrator filed a Second Amended Complaint, which is the

operative pleading in the instant proceeding.¹ In the Second Amended Complaint, the Administrator alleges: (1) during the period April 14, 2004, through August 22, 2009, Karl Mitchell and Big Cat Encounters operated as “exhibitors,” as that word is defined in the Animal Welfare Act and the Regulations, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1, 2.10(c), and 2.100(a); (2) on May 4, 2004, and March 6, 2008, Mr. Mitchell and Big Cat Encounters did not allow Animal and Plant Health Inspection Service officials access to facilities, records, and animals, in willful violation of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a); (3) on April 14, 2004, Mr. Mitchell and Big Cat Encounters failed to handle large felids as carefully as possible, in a manner that did not cause trauma, behavioral stress, physical harm, or unnecessary discomfort to the animals, in willful violation of 9 C.F.R. § 2.131(a)(1) (2004), and on July 7, 2007, February 1, 2008, February 2, 2008, February 25, 2009, a day in June 2009, and August 22, 2009, Mr. Mitchell and Big Cat Encounters failed to handle large felids as carefully as possible, in a manner that did not cause trauma, behavioral stress, physical harm, or unnecessary discomfort to the animals, in willful violation of 9 C.F.R. § 2.131(b)(1) (2005);² (4) on April 14, 2004, Mr. Mitchell and Big Cat Encounters failed to handle animals, during public exhibition, so there was

¹See Administrative Law Judge Victor W. Palmer’s [hereinafter the ALJ] March 8, 2010, Ruling granting the Administrator’s January 22, 2010, Motion for Leave to File Second Amended Complaint.

²Effective August 13, 2004, 9 C.F.R. § 2.131(a)(1) (2004) was redesignated as 9 C.F.R. § 2.131(b)(1) (69 Fed. Reg. 42,089, 42,102 (July 14, 2004)).

minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, in willful violation of 9 C.F.R. § 2.131(b)(1) (2004), and on February 1, 2008, February 2, 2008, February 25, 2009, a day in June 2009, and August 22, 2009, Mr. Mitchell and Big Cat Encounters failed to handle animals, during public exhibition, so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, in willful violation of 9 C.F.R. § 2.131(c)(1) (2005);³ (5) on July 7, 2007, Mr. Mitchell and Big Cat Encounters failed to provide adequate veterinary care, food, water, and housing to a lion; and (6) Mr. Mitchell knowingly failed to obey cease and desist orders entered against him by the Secretary of Agriculture in *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998), and *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001).

Mr. Mitchell and Big Cat Encounters denied the allegations in the Second Amended Complaint (Answer to Compl.; Ans. to Am. Compl.).⁴

³Effective August 13, 2004, 9 C.F.R. § 2.131(b)(1) (2004) was redesignated as 9 C.F.R. § 2.131(c)(1) (69 Fed. Reg. 42,089, 42,102 (July 14, 2004)).

⁴See ALJ's March 8, 2010, Ruling at 2 (stating "[i]n lieu of an Answer by Respondent to the second amended complaint, I herewith rule on Respondent's behalf that he shall be considered to have denied all allegations contained in the second amended complaint to the same extent as he denied the allegations of the original complaint and the first amended complaint.")

On April 6 and 7, 2010, the ALJ conducted an oral hearing in Las Vegas, Nevada. Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator. Mr. Mitchell appeared pro se and as a representative of Big Cat Encounters.

On August 6, 2010, after the parties submitted post-hearing briefs, the ALJ filed a Decision and Order in which the ALJ: (1) concluded that, on April 17, 2004, February 1, 2008, February 2, 2008, a day in June 2009, and August 22, 2009, Mr. Mitchell and Big Cat Encounters exhibited one or more tigers without an Animal Welfare Act license, in violation of the Animal Welfare Act and 9 C.F.R. § 2.1; (2) concluded that, on April 17, 2004, February 1, 2008, February 2, 2008, a day in June 2009, and August 22, 2009, Mr. Mitchell and Big Cat Encounters handled one or more tigers, during public exhibition, in violation of 7 U.S.C. § 2143 and 9 C.F.R. § 2.131(c)(1); (3) concluded that, on May 4, 2004, and March 6, 2008, Mr. Mitchell and Big Cat Encounters did not allow Animal and Plant Health Inspection Service officials access to facilities, records, and animals, in violation of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a); (4) concluded that Mr. Mitchell knowingly failed to obey cease and desist orders entered against him by the Secretary of Agriculture in *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998), and *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001); (5) ordered Mr. Mitchell and Big Cat Encounters to cease and desist from further violations of the Animal Welfare Act and the Regulations; (6) assessed Mr. Mitchell and

Big Cat Encounters, jointly and severally, a \$50,625 civil penalty; and (7) assessed Mr. Mitchell an \$18,000 civil penalty for his knowing failures to obey cease and desist orders entered against him by the Secretary of Agriculture in *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998), and *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001) (ALJ's Decision and Order at 4-6, 14).

On September 9, 2010, Mr. Mitchell and Big Cat Encounters appealed the ALJ's Decision and Order to the Judicial Officer. On September 16, 2010, the Administrator filed Complainant's Response to Petition for Appeal and Complainant's Petition for Appeal. Mr. Mitchell and Big Cat Encounters did not file a timely response to the Administrator's appeal petition, and on December 21, 2010, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. Based upon a careful review of the record, I adopt, with minor changes, the ALJ's Decision and Order, except that, I increase the civil penalty assessed against Mr. Mitchell and Big Cat Encounters, jointly and severally, from \$50,625 to \$67,000, and I increase the civil penalty assessed against Mr. Mitchell for his knowing failures to obey cease and desist orders entered against him by the Secretary of Agriculture from \$18,000 to \$19,800.

DECISION

Findings of Fact

1. Big Cat Encounters is a Nevada nonprofit corporation (Answer to Compl., Exh. 3; Answer to Am. Compl.).
2. Big Cat Encounters' mailing address is Post Office Box 1085, Pahrump, Nevada (CX 11 at 3).⁵
3. Mr. Mitchell is an individual whose mailing address is Post Office Box 1085, Pahrump, Nevada (CX 11 at 4).
4. At all times material to the instant proceeding, Mr. Mitchell was an officer of Big Cat Encounters (CX 11 at 4, CX 11a at 5, 7-9, 12-13, 15-17, CX 23A).
5. Since November 18, 2009, Mr. Mitchell has held all of the offices of Big Cat Encounters and has been Big Cat Encounters' sole director (Tr. 519).⁶
6. Mr. Mitchell held Animal Welfare Act license number 88-C-0076 until the Secretary of Agriculture's order revoking Animal Welfare Act license number 88-C-0076 became effective in October 2001 (CX 14).
7. Mr. Mitchell and Big Cat Encounters jointly operate a moderate-size business that owns lions, tigers, and other animals. The business purports to be a nonprofit animal rescue shelter. (CX 6, CX 16; Tr. 410, 412, 509, 538.)

⁵The Administrator's exhibits are designated as "CX."

⁶References to the transcript of the April 6-7, 2010, hearing are designated as "Tr."

8. On September 9, 1998, the Secretary of Agriculture issued *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998), assessing Mr. Mitchell a \$750 civil penalty and ordering Mr. Mitchell to cease and desist from violations of the Regulations (CX 12).

9. On August 8, 2001, the Secretary of Agriculture issued *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001), assessing Mr. Mitchell a \$16,775 civil penalty, ordering Mr. Mitchell to cease and desist from violations of the Animal Welfare Act and the Regulations, and revoking Mr. Mitchell's Animal Welfare Act license (CX 14; Tr. 442).

10. On April 17, 2004, February 1, 2008, February 2, 2008, and August 22, 2009, Mr. Mitchell and Big Cat Encounters exhibited one or more tigers to the public, for compensation, by requiring donations from persons who either were photographed with the tigers or were allowed to pet, touch, or otherwise be in close proximity to the tigers (CX 5 at 2, CX 6-CX 9, CX 16, CX 21A-CX 21B, CX 21D, CX 21F-CX 21G, CX 22A, CX 23B, CX 24 at 8, CX 28-CX 30, CX 32, CX 34, CX 38).

11. On a day in June 2009, Mr. Mitchell was engaged as a trainer of a tiger that he brought to the set of the Paris Hilton reality show where the tiger was filmed while being petted by various cast members (CX 16 at 7, CX 39; Tr. 256-62).

12. The exhibitions referenced in paragraphs 10 and 11 of these Findings of Fact took place without sufficient distance and/or barriers between the tigers and the general viewing public so as to assure the safety of the tigers and the public.

13. On May 4, 2004, and March 6, 2008, Mr. Mitchell and Big Cat Encounters did not allow Animal and Plant Health Inspection Service officials access to facilities, records, and animals at a zoo operated by Mr. Mitchell and Big Cat Encounters in which they kept animals for public exhibition (CX 10, CX 22A-CX 22E; Tr. 161-66, 289-96, 300-03, 313-19).

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. On April 17, 2004, February 1, 2008, February 2, 2008, a day in June 2009, and August 22, 2009, Mr. Mitchell and Big Cat Encounters exhibited one or more tigers to the public, for compensation, without holding an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a)(1) and 2.10(c).
3. On April 17, 2004, during public exhibition, Mr. Mitchell and Big Cat Encounters failed to handle one or more tigers so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, in willful violation of 9 C.F.R. § 2.131(b)(1) (2004).
4. On February 1, 2008, February 2, 2008, a day in June 2009, and August 22, 2009, during public exhibition, Mr. Mitchell and Big Cat Encounters failed to handle one or more tigers so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so

as to assure the safety of the animals and the public, in willful violation of 9 C.F.R. § 2.131(c)(1) (2005).

5. On May 4, 2004, and March 6, 2008, Mr. Mitchell and Big Cat Encounters did not allow Animal and Plant Health Inspection Service officials access to facilities, records, and animals at a zoo in which Mr. Mitchell and Big Cat Encounters kept animals for public exhibition, in willful violation of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a).

6. On April 17, 2004, May 4, 2004, February 1, 2008, February 2, 2008, March 6, 2008, a day in June 2009, and August 22, 2009, Mr. Mitchell knowingly failed to obey cease and desist orders entered against him by the Secretary of Agriculture in *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998), and *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001).

Discussion

Mr. Mitchell and Big Cat Encounters' Violations

In 2001, the Secretary of Agriculture revoked Mr. Mitchell's Animal Welfare Act license.⁷ Despite the revocation of his Animal Welfare Act license, Mr. Mitchell has continued to operate as an exhibitor, both as an individual and through Big Cat Encounters, the nonprofit corporation he formed in an effort to exempt his activities from the Animal Welfare Act and the Regulations. But his activities are not exempt. Just as

⁷*In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001).

prior to the revocation of his Animal Welfare Act license, Mr. Mitchell is a trainer of lions, tigers, and other animals that he and Big Cat Encounters exhibit to the public for compensation. The word “exhibitor” is defined in the Animal Welfare Act, as follows:

§ 2132. Definitions

When used in this chapter—

....

(h) The term “exhibitor” means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not[.]

7 U.S.C. § 2132(h). The Regulations reiterate this definition, as follows:

§ 1.1 Definitions.

....

Exhibitor means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not.

9 C.F.R. § 1.1.

The word “zoo” is also defined in the Regulations:

§ 1.1 Definitions.

....

Zoo means any park, building, cage, enclosure, or other structure or premise in which a live animal or animals are kept for public exhibition or viewing, regardless of compensation.

9 C.F.R. § 1.1.

Each exhibitor is required to hold an Animal Welfare Act license issued by the Secretary of Agriculture (7 U.S.C. §§ 2133-2134; 9 C.F.R. §§ 2.1(a), .10(c)) and must handle animals in accordance with the Regulations (9 C.F.R. §§ 1.1-3.142). Exhibitors must also allow Animal and Plant Health Inspection Service officials access to their facilities, animals, and records so that the Secretary of Agriculture can enforce the Animal Welfare Act and the Regulations (7 U.S.C. § 2146(a); 9 C.F.R. § 2.126).

Mr. Mitchell and Big Cat Encounters did not have an Animal Welfare Act license on each of five occasions (April 17, 2004, February 1, 2008, February 2, 2008, a day in June 2009, and August 22, 2009) when they exhibited one or more tigers to the public for compensation. In addition, on each of those occasions, Mr. Mitchell and Big Cat Encounters did not handle animals, during public exhibition, so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, as required by 9 C.F.R. § 2.131(b)(1) (2004) and 9 C.F.R. § 2.131(c)(1) (2005). Witnesses testified and photographs were received in evidence that show, on each of those occasions, although Mr. Mitchell held the exhibited tigers and the tigers were tethered, the tigers were not separated by distance and/or a barrier from members of the public. In fact, various persons were permitted to pet or to otherwise come in contact with exhibited tigers, and, in response to Mr. Mitchell and Big Cat Encounters'

invitations, some people had their photographs taken while touching or in close proximity to the tigers.

The facts in *In re The International Siberian Tiger Foundation*, 61 Agric. Dec. 53 (2002), illustrate the dangers of allowing members of the public to come in close proximity to tigers without the presence of physical barriers, even when tigers are declawed, chained, and ostensibly controlled by not one, but by two trainers. Person after person was bitten, with one person requiring 50 stitches. These facts were reviewed against the objectives of the Animal Welfare Act and 9 C.F.R. § 2.131, as follows:

The purpose of the Animal Welfare Act, as it relates to exhibited animals, is to insure that they are provided humane care and treatment (7 U.S.C. § 2131). The Secretary of Agriculture is specifically authorized to promulgate regulations to govern the humane handling of animals by exhibitors (7 U.S.C. §§ 2143(a), 2151). The Regulations deal almost exclusively with the care and treatment of animals. However, section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) also provides that exhibited animals must be handled in a manner that assures not only their safety but also the safety of the public.

Animals that attack or harm members of the public are at risk of being harmed. The record establishes that effective methods of extricating people from the grip of an animal can cause the animal harm and can cause the animal's death. . . . Even after an animal attacks a person, the animal is at risk of being harmed for revenge or for public safety reasons. . . . [In the latter respect, a] tiger that attacked a small girl was confiscated by the health department and decapitated to test it for rabies. . . . Thus, section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)), which requires that, during public exhibition, animals be handled so there is minimal risk of harm to the public, with sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure

the safety of the public, is directly related to the humane care and treatment of animals and within the authority granted to the Secretary of Agriculture under the Animal Welfare Act.

In re The International Siberian Tiger Foundation, 61 Agric. Dec. at 76-77.

In *Antle v. Johanns*, 2007 WL 5209982 (D.S.C. 2007), *aff'd per curiam*, 264 F. App'x 271 (4th Cir. 2008), the United States District Court for the District of South Carolina dismissed an action to set aside a United States Department of Agriculture decision that interpreted 9 C.F.R. § 2.131 to be violated when persons who are to be photographed with a big cat are allowed to stand behind the cat without any barrier between the cat and the persons being photographed.

Mr. Mitchell and Big Cat Encounters further violated 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a) on the two occasions when they refused to allow Animal and Plant Health Inspection Service officials access to their facilities, records, and animals at Mr. Mitchell's ranch in Pahrump, Nevada. The brochures circulated by Mr. Mitchell and Big Cat Encounters to the public encouraged members of the public to tour Mr. Mitchell's ranch and have their picture taken with a Bengal tiger for a fee of \$150, or for \$250, if, in addition to the tour and photograph, they chose to attend a lecture (CX 6). Mr. Mitchell's ranch meets the definition of the word "zoo" set forth in 9 C.F.R. § 1.1.⁸ Therefore, when Animal and Plant Health Inspection Service officials came to the ranch, Mr. Mitchell and Big Cat Encounters were required to provide the officials access to the

⁸See *In re James Petersen*, 53 Agric. Dec. 80, 84-85 (1994).

facilities, records, and animals, and Mr. Mitchell and Big Cat Encounters violated 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a) when they did not.

Cease and Desist Order and Civil Penalties

Mr. Mitchell and Big Cat Encounters are jointly responsible for violating the Animal Welfare Act and the Regulations on each of the five occasions during which they exhibited animals without an Animal Welfare Act license and on each of those occasions, during which they handled animals, in violation of 9 C.F.R. § 2.131(b)(1) (2004) or 9 C.F.R. § 2.131(c)(1) (2005). Mr. Mitchell and Big Cat Encounters also violated 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a) on the two occasions when they did not allow Animal and Plant Health Inspection Service officials access to their facilities, records, and animals. In an effort to deter future violations, I issue a cease and desist order for a third time against Mr. Mitchell that shall also be applicable, for the first time, to Big Cat Encounters.

Under 7 U.S.C. § 2149(b), exhibitors who violate the Animal Welfare Act or the Regulations may be assessed a civil penalty for each violation. The maximum civil penalty that may be assessed for each violation has been modified under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), and various implementing regulations issued by the Secretary of Agriculture. Though the Animal Welfare Act originally specified a maximum civil penalty for each violation of the Animal Welfare Act and the Regulations of \$2,500, during the period September 2,

1997, through June 23, 2005, the maximum civil penalty for each violation was \$2,750 (7 C.F.R. § 3.91(b)(2)(v) (2005)), and during the period June 24, 2005, through June 17, 2008, the maximum civil penalty for each violation was \$3,750 (7 C.F.R. § 3.91(b)(2)(ii) (2006)). The Animal Welfare Act was itself amended and, effective June 18, 2008, the maximum civil penalty for each violation was increased to \$10,000.

In addition to the violations by both Mr. Mitchell and Big Cat Encounters, Mr. Mitchell knowingly failed to obey cease and desist orders previously issued against him by the Secretary of Agriculture. A civil penalty of \$1,650 must be assessed for each offense by any person who knowingly fails to obey a cease and desist order (7 U.S.C. § 2149(b); 7 C.F.R. § 3.91(b)(2)(v) (2005); 7 C.F.R. § 3.91(b)(2)(ii) (2006)). I conclude Mr. Mitchell knowingly failed to obey previously issued cease and desist orders on 12 occasions; therefore, I assess Mr. Mitchell \$19,800 for his knowing failures to obey cease and desist orders issued in *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998), and *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001).

In assessing civil penalties against Mr. Mitchell and Big Cat Encounters for their joint violations of the Animal Welfare Act and the Regulations, the Animal Welfare Act directs that the Secretary of Agriculture give due consideration to the size of the business of the person involved, the gravity of the violations, the person's good faith, and the history of previous violations (7 U.S.C. § 2149(b)). Mr. Mitchell and Big Cat

Encounters' business is of moderate size. In light of the previous proceedings against Mr. Mitchell that resulted in the issuance of cease and desist orders, civil penalties, and the revocation of Mr. Mitchell's Animal Welfare Act license, Mr. Mitchell has a history of previous violations and this fact demonstrates an absence of good faith.

The only other variable to be considered is the gravity of each violation. As stated in *In re Otto Berosini*, 54 Agric. Dec. 886, 907 (1995):

The licensing requirements of the Act are at the center of this remedial legislation. Respondent's violation, continuing to operate without a license, with full knowledge of the licensing requirements, strikes at the heart of the regulatory program. *In re Mary Bradshaw*, 50 Agric. Dec. 499, 509 (1991); *see also In re Rosa Lee Ennes*, 45 Agric. Dec. 540, 546 (1986).

Accordingly, the maximum civil penalty should be imposed for each occasion that Mr. Mitchell and Big Cat Encounters exhibited animals without an Animal Welfare Act license, in violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a)(1) and 2.10(c). Therefore, I assess Mr. Mitchell and Big Cat Encounters a \$2,750 civil penalty for the April 17, 2004, violation; a \$3,750 civil penalty for each of the violations that took place on February 1, 2008, and February 2, 2008; and a \$10,000 civil penalty for each of the violations that took place on a day in June 2009 and August 22, 2009. The total civil penalty assessed against Mr. Mitchell and Big Cat Encounters for exhibiting animals without an Animal Welfare Act license on five separate occasions is \$30,250.

On the same days as Mr. Mitchell and Big Cat Encounters exhibited animals without an Animal Welfare Act license (April 17, 2004, February 1, 2008, February 2,

2008, a day in June 2009, and August 22, 2009), they also failed to handle animals, during public exhibition, so there was minimal risk of harm to the animals and to the public, with sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, in violation of 9 C.F.R. § 2.131(b)(1) (2004) and 9 C.F.R. § 2.131(c)(1) (2005).

Mr. Mitchell and Big Cat Encounters' violations of the handling provisions were serious and could have resulted in harm to Mr. Mitchell and Big Cat Encounters' animals or to the people viewing those animals. Therefore, I assess Mr. Mitchell and Big Cat Encounters the maximum, applicable civil penalty for each handling violation that occurred on April 17, 2004, February 1, 2008, February 2, 2008, a day in June 2009, and August 22, 2009, for a total of \$30,250.

Mr. Mitchell and Big Cat Encounters' failures to allow Animal and Plant Health Inspection Service officials access to facilities, records, and animals are serious violations of the Animal Welfare Act and the Regulations because those violations thwart the Secretary of Agriculture's ability to enforce the Animal Welfare Act and the Regulations. Therefore, I assess Mr. Mitchell and Big Cat Encounters the maximum amount for each of those violations: \$2,750 for the May 4, 2004, violation and \$3,750 for the March 6, 2008, violation, for a total of \$6,500.

Therefore, the total amount of the civil penalties which I assess against Mr. Mitchell and Big Cat Encounters, jointly and severally, for their violations of the Animal Welfare Act and the Regulations is \$67,000.

Mr. Mitchell and Big Cat Encounters' Appeal Petition

Mr. Mitchell and Big Cat Encounters raise seven issues in their Appeal of Decision [hereinafter Appeal Petition]. First, Mr. Mitchell and Big Cat Encounters contend the civil penalties assessed by the ALJ are excessive because "USDA views a medium sized facility as generating 7 million dollars annually" (Appeal Pet. at 1).

The Animal Welfare Act requires that the Secretary of Agriculture consider the size of the business of the violator when determining the amount of the civil penalty to be assessed for violations of the Animal Welfare Act or the Regulations (7 U.S.C. § 2149(b)). The ALJ found Mr. Mitchell and Big Cat Encounters jointly operate a moderate-size business (ALJ's Decision and Order at 2, 12). Mr. Mitchell and Big Cat Encounters cite no basis for their assertion that the United States Department of Agriculture views a business that generates \$7,000,000 annually as a medium-size business, and I cannot locate any evidence in the record supporting their assertion. Therefore, I reject Mr. Mitchell and Big Cat Encounters' contention that the ALJ's conclusion that Mr. Mitchell and Big Cat Encounters' business is medium-sized, is error.

Second, Mr. Mitchell and Big Cat Encounters assert the civil penalties assessed by the ALJ are excessive because Mr. Mitchell “is a RETIRED DISABLED VETERAN on a disability pension” (Appeal Pet. at 1).

Mr. Mitchell’s status as a retired disabled veteran on a disability pension is not relevant to the determination of the amount of the civil penalty to be assessed for violations of the Animal Welfare Act and the Regulations.⁹ The ALJ’s failure to consider Mr. Mitchell’s status as a retired disabled veteran, when determining the amount of the civil penalty, is not error.

Third, Mr. Mitchell and Big Cat Encounters assert the civil penalties assessed by the ALJ are excessive because “[n]o revenues are generated from the private collection of these rescued animals” (Appeal Pet. at 1).

The record establishes that Mr. Mitchell and Big Cat Encounters’ animals have appeared in movies; television shows; commercials; photographs in magazines, such as Vogue and Elle; Las Vegas, Nevada, conventions and trade shows; and rock videos (Tr. 509; CX 6, CX 16) indicating that Mr. Mitchell and Big Cat Encounters’ jointly-operated business generates revenues. Therefore, I reject Mr. Mitchell and Big

⁹See *In re J. Wayne Shaffer*, 60 Agric. Dec. 444, 477 (2001) (holding the respondent’s disability and need for income are not defenses to his violations of the Animal Welfare Act and the Regulations or mitigating circumstances to be considered when determining the amount of the civil penalty to be assessed); *In re James J. Everhart*, 56 Agric. Dec. 1400, 1417 (1997) (holding the respondent’s disability is not a mitigating factor and forms no basis for setting aside or modifying a default decision).

Cat Encounters' assertion that no revenues are generated from Mr. Mitchell and Big Cat Encounters' animals.

Fourth, Mr. Mitchell and Big Cat Encounters assert the civil penalties assessed by the ALJ are excessive because "SEAWORLD was just fined 75,000 for the Death of a trainer [and i]n comparison it would appear that the fines are disproportionate, punitive, and therefore excessive" (Appeal Pet. at 1).

Mr. Mitchell and Big Cat Encounters offer no support for their assertion that Sea World was fined \$75,000 for the death of a trainer. However, attached to the Administrator's response to Mr. Mitchell and Big Cat Encounters' Appeal Petition are documents which establish that the United States Department of Labor, Occupational Safety and Health Administration, assessed Sea World a \$75,000 fine for violations of the Occupational Safety and Health Act of 1970. Based upon Mr. Mitchell and Big Cat Encounters' description of the fine assessed against Sea World, I infer the fine described in the documents provided by the Administrator is the fine to which Mr. Mitchell and Big Cat Encounters refer. I reject Mr. Mitchell and Big Cat Encounters' argument that a comparison of the amount of the fine assessed by the Occupational Safety and Health Administration for violations of the Occupational Safety and Health Act of 1970 with the amount of the civil penalties assessed by the ALJ in the instant Animal Welfare Act proceeding demonstrates that the civil penalties assessed by the ALJ are "disproportionate, punitive and therefore excessive."

Fifth, Mr. Mitchell and Big Cat Encounters assert, as State of Nevada humane officers, Mr. Mitchell and Big Cat Encounters are not subject to the Animal Welfare Act and the Regulations (Appeal Pet. at 1).

As an initial matter, Mr. Mitchell and Big Cat Encounters do not cite, and I cannot locate, any evidence establishing that either Mr. Mitchell or Big Cat Encounters was a State of Nevada humane officer during the period when the violations that are the subject of the instant proceeding occurred. Moreover, neither the Animal Welfare Act nor the Regulations contain an exemption for State of Nevada humane officers. Therefore, even if I were to find that Mr. Mitchell and Big Cat Encounters were State of Nevada humane officers during the period relevant to the instant proceeding, I would reject Mr. Mitchell and Big Cat Encounters' contention that, as State of Nevada humane officers, they are not subject to the requirements of the Animal Welfare Act and the Regulations.

Sixth, Mr. Mitchell and Big Cat Encounters argue they are private citizens that do not have an Animal Welfare Act license; therefore, the United States Department of Agriculture has no right to inspect their facilities without a warrant or without the assistance of police (Appeal Pet. at 1).

The ALJ concluded that, on May 4, 2004, and March 6, 2008, Mr. Mitchell and Big Cat Encounters did not allow Animal and Plant Health Inspection Service officials access to facilities, records, and animals, in violation of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a) (ALJ's Decision and Order at 5).

The Secretary of Agriculture is authorized to inspect any exhibitor's facilities, animals, and records to determine whether the exhibitor has violated or is violating the Animal Welfare Act or the Regulations, as follows:

§ 2146. Administration and enforcement by Secretary

(a) Investigations and inspections

The Secretary shall make such investigations or inspections as he deems necessary to determine whether any . . . exhibitor . . . subject to 2142 of this title, has violated or is violating any provision of this chapter or any regulation or standard issued thereunder, and for such purposes the Secretary shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept pursuant to 2140 of this title of any such . . . exhibitor[.]

7 U.S.C. § 2146(a). The Regulations provide that each exhibitor shall allow access to facilities, animals, and records, as follows:

§ 2.126 Access and inspection of records and property.

(a) Each . . . exhibitor . . . shall during business hours, allow APHIS officials:

- (1) To enter its place of business;
- (2) To examine records required to be kept by the Act and the regulations in this part;
- (3) To make copies of the records;
- (4) To inspect and photograph the facilities, property and animals, as the APHIS officials consider necessary to enforce the provisions of the Act, the regulations and the standards in this subchapter; and
- (5) To document by the taking of photographs and other means, conditions and areas of noncompliance.

9 C.F.R. § 2.126(a).

Mr. Mitchell and Big Cat Encounters were “exhibitors” as that term is defined in 7 U.S.C. § 2132(h) and 9 C.F.R. § 1.1 on May 4, 2004, and March 6, 2008; therefore, the Secretary of Agriculture was authorized to inspect their facilities, animals, and records in accordance with 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a) and Mr. Mitchell and Big Cat Encounters were required to allow Animal and Plant Health Inspection Service officials access to their facilities, animals, and records. Neither the Animal Welfare Act nor the Regulations require that police assist Animal and Plant Health Inspection Service officials during inspections, as Mr. Mitchell and Big Cat Encounters contend. Moreover, it has long been held that a warrant is not required for an inspection conducted in accordance with 7 U.S.C. § 2146(a).¹⁰

Seventh, Mr. Mitchell and Big Cat Encounters contend they were not exhibitors during the period they are alleged to have violated the Animal Welfare Act and the Regulations (Appeal Pet. at 2).

Based upon the evidence before me, I find that at least on April 17, 2004, May 4, 2004, February 1, 2008, February 2, 2008, March 6, 2008, a day in June 2009, and August 22, 2009, Mr. Mitchell and Big Cat Encounters met both the statutory and regulatory definitions of the term “exhibitor” (7 U.S.C. § 2132(h); 9 C.F.R. § 1.1). Mr. Mitchell and Big Cat Encounters displayed large felids to the public for

¹⁰*Lesser v. Espy*, 34 F.3d 1301 (7th Cir. 1994); *In re Jerome Schmidt* (Order Denying Pet. to Reconsider), 66 Agric. Dec. 596, 599 (2007).

compensation (CX 4-CX 9, CX 21A-CX 21B, CX 21D-CX 21G, CX 23B, CX 24 at 8, CX 26-CX 27, CX 32, CX 33-CX 34, CX 38-CX 39; Tr. 24, 31-42, 47-61, 232-35, 256-61) and operated a “zoo,” as that word is defined in the Regulations (CX 6, CX 7, CX 17). Therefore, I reject Mr. Mitchell and Big Cat Encounters’ contention that they were not exhibitors on April 17, 2004, May 4, 2004, February 1, 2008, February 2, 2008, March 6, 2008, a day in June 2009, and August 22, 2009.

The Administrator’s Appeal Petition

The Administrator raises five issues in Complainant’s Petition for Appeal [hereinafter Administrator’s Appeal Petition]. First, the Administrator contends the ALJ erroneously failed to find that, on each of the 1,956 days from April 14, 2004, through August 22, 2009, Mr. Mitchell and Big Cat Encounters operated as exhibitors without an Animal Welfare Act license, in violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a)(1) and 2.10(c) (Administrator’s Appeal Pet. at 2-4).

I have thoroughly reviewed the record and agree with the ALJ that the Administrator did not prove that Mr. Mitchell and Big Cat Encounters operated as exhibitors without an Animal Welfare Act license on each of the 1,956 days from April 14, 2004, through August 22, 2009.

Second, the Administrator contends the ALJ erroneously assessed Mr. Mitchell and Big Cat Encounters more than the maximum civil penalty for their exhibitions of tigers on April 17, 2004, February 1, 2008, February 2, 2008, a day in June 2009, and

August 22, 2009, without holding an Animal Welfare Act license, in violation of 9 C.F.R. § 2.1(a)(1). The Administrator asserts the maximum civil penalty that may be assessed for these five violations of 9 C.F.R. § 2.1(a)(1) is \$30,250. (Administrator's Appeal Pet. at 4-5.)

The ALJ assessed Mr. Mitchell and Big Cat Encounters a civil penalty of \$31,250 for five exhibitions of tigers without an Animal Welfare Act license, in violation of 9 C.F.R. § 2.1(a)(1) (ALJ's Decision and Order at 13). I agree with the Administrator that the maximum civil penalty that may be assessed against Mr. Mitchell and Big Cat Encounters for these five violations of 9 C.F.R. § 2.1(a)(1) is \$30,250;¹¹ therefore, I assess Mr. Mitchell and Big Cat Encounters a \$30,250 civil penalty for their five violations of 9 C.F.R. § 2.1(a)(1).

Third, the Administrator contends the ALJ erroneously assessed Mr. Mitchell and Big Cat Encounters a \$15,625 civil penalty for their failures to handle animals, during public exhibition, so there was minimal risk of harm to the animals and to the public, with sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, in violation of

¹¹The maximum civil penalty that may be assessed for the April 17, 2004, violation of 9 C.F.R. § 2.1(a)(1) is \$2,750 (7 C.F.R. § 3.91(b)(2)(v) (2005)). The maximum civil penalty that may be assessed for the February 1, 2008, and February 2, 2008, violations of 9 C.F.R. § 2.1(a)(1) is \$3,750 for each violation (7 C.F.R. § 3.91(b)(2)(ii) (2006)). The maximum civil penalty that may be assessed for the June 2009 and August 22, 2009, violations of 9 C.F.R. § 2.1(a)(1) is \$10,000 for each violation (7 U.S.C. § 2149(b) (Supp. II 2008)).

9 C.F.R. § 2.131(b)(1) (2004) and 9 C.F.R. § 2.131(c)(1) (2005). The Administrator argues the ALJ erroneously considered the fact that Mr. Mitchell and Big Cat Encounters' violations did not result in injury to the animals or to members of the public when he determined the amount of the civil penalty to assess Mr. Mitchell and Big Cat Encounters for their violations of 9 C.F.R. § 2.131(b)(1) (2004) and 9 C.F.R. § 2.131(c)(1) (2005). The Administrator asserts the ALJ should have assessed Mr. Mitchell and Big Cat Encounters a \$30,250 civil penalty, the maximum civil penalty for these violations. (Administrator's Appeal Pet. at 5-7.)

The ALJ found that on April 17, 2004, Mr. Mitchell and Big Cat Encounters exhibited tigers to the public with no distance and/or barriers separating the public and the tigers, in violation of 9 C.F.R. § 2.131(b)(1) (2004), and on February 1, 2008, February 2, 2008, a day in June 2009, and August 22, 2009, Mr. Mitchell and Big Cat Encounters exhibited tigers to the public with no distance and/or barriers separating the public and the tigers, in violation of 9 C.F.R. § 2.131(c)(1) (2005). The ALJ stated with respect to the sanction for these five violations:

Though violating the regulation respecting the handling of exhibited animals set forth in 9 C.F.R. § 2.131(c)(1) is a serious violation, fortunately no one was injured. For this reason, I am assessing one-half of the maximum, applicable civil penalty for each handling violation that also occurred on those occasions. The penalties assessed for the handling violations total \$15,625.

ALJ's Decision and Order at 13.

The purpose of 9 C.F.R. § 2.131(b)(1) (2004) and 9 C.F.R. § 2.131(c)(1) (2005) is to reduce the *risk* of harm to animals and to the public. The fact that no harm actually resulted from Mr. Mitchell and Big Cat Encounters' violations does not affect my view of the gravity of the violations; therefore, I disagree with the ALJ's reliance on the fact that no harm resulted from Mr. Mitchell and Big Cat Encounters' violations when determining the amount of the civil penalty to be assessed, and I assess Mr. Mitchell and Big Cat Encounters the maximum civil penalty that may be assessed for their violations of 9 C.F.R. § 2.131(b)(1) (2004) and 9 C.F.R. § 2.131(c)(1) (2005).

Fourth, the Administrator contends the ALJ erroneously assessed Mr. Mitchell and Big Cat Encounters a \$3,750 civil penalty for their refusals to allow Animal and Plant Health Inspection Service officials access to facilities, records, and animals, in violation of 9 C.F.R. § 2.126(a). The Administrator argues the ALJ erroneously took into account the lack of evidence of mistreatment of animals when determining the amount of the civil penalty to assess Mr. Mitchell and Big Cat Encounters for their violations of 9 C.F.R. § 2.126(a). The Administrator asserts the ALJ should have assessed Mr. Mitchell and Big Cat Encounters the maximum civil penalty for these violations of 9 C.F.R. § 2.126(a); namely, \$6,500. (Administrator's Appeal Pet. at 7-9.)

The ALJ concluded that, on May 4, 2004, and March 6, 2008, Mr. Mitchell and Big Cat Encounters failed to allow Animal and Plant Health Inspection Service officials access to facilities, records, and animals at a zoo in which Mr. Mitchell and Big Cat

Encounters kept animals for public exhibition, in violation of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a) (ALJ's Decision and Order at 5). The ALJ stated that, while denying Animal and Plant Health Inspection Service "inspectors access to inspect . . . facilities, records and animals . . . violates a critical aspect of the need under the [Animal Welfare] Act to monitor an exhibitor's compliance[,]. . . there is no evidence of mistreatment of animals and, for this reason, the two violations that occurred when the maximum civil penalty was \$3,750, shall be assessed at one-half that amount for each of those violations, or a total of \$3,750." (ALJ's Decision and Order at 13.)

An exhibitor's failure to allow Animal and Plant Health Inspection Service officials to enter the exhibitor's place of business to conduct inspections, in violation of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a), is a serious violation because it thwarts the Secretary of Agriculture's ability to monitor the exhibitor's compliance with the Animal Welfare Act and the Regulations and severely undermines the Secretary of Agriculture's ability to enforce the Animal Welfare Act and the Regulations. Nothing in 7 U.S.C. § 2146(a) or 9 C.F.R. § 2.126(a) requires a showing that animals are mistreated, and a maximum civil penalty may be assessed for violations of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a) without establishing that animals have been mistreated. Moreover, if an exhibitor does not allow Animal and Plant Health Inspection Service officials to conduct an inspection in accordance with 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a), those

Animal and Plant Health Inspection Service officials would generally not be in a position to evaluate the care and treatment provided to the exhibitor's animals.

Mr. Mitchell has previously been found to have failed to allow Animal and Plant Health Inspection Service officials access to animals, facilities, and records, in violation of 7 U.S.C. § 2146(a).¹² In light of the seriousness of Mr. Mitchell and Big Cat Encounters' May 4, 2004, and March 6, 2008, violations of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a) and Mr. Mitchell's previous violations of 7 U.S.C. § 2146(a), I assess Mr. Mitchell and Big Cat Encounters the maximum civil penalty that may be assessed for their violations of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126(a): \$2,750 for the May 4, 2004, violation and \$3,750 for the March 6, 2008, violation, for a total of \$6,500.¹³

Fifth, the Administrator contends the ALJ erroneously assessed Mr. Mitchell an \$18,000 civil penalty for 12 violations of cease and desist orders issued in *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998), and *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001). The Administrator contends the ALJ correctly concluded the maximum civil penalty should apply to Mr. Mitchell's failures to obey previously issued cease and desist orders, but the ALJ erroneously found that the maximum civil penalty for a knowing failure to obey a cease and desist order is

¹²*In re Karl Mitchell*, 60 Agric. Dec. 91, 106, 110 (2001), *aff'd*, 42 F. App'x 991 (9th Cir. 2002); *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001).

¹³7 C.F.R. § 3.91(b)(2)(v) (2005); 7 C.F.R. § 3.91(b)(2)(ii) (2006).

\$1,500. The Administrator contends the maximum civil penalty for a knowing failure to obey a cease and desist order at all times material to the instant proceeding was \$1,650; thus, the ALJ should have assessed Mr. Mitchell an \$18,800 civil penalty for his failures to obey cease and desist orders issued in *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998), and *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001). (Administrator's Appeal Pet. at 9-10.)

The ALJ assessed Mr. Mitchell an \$18,000 civil penalty for 12 violations of cease and desist orders issued in *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998), and *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001), stating:

[T]he latest edition of Westlaw that shows the maximum amount of a civil penalty . . . continues to show \$1,500 as the maximum amount for a knowing failure to obey a cease and desist order. For that reason, \$1,500 has been concluded to be the maximum amount that may be assessed in this proceeding for each time Karl Mitchell knowingly failed to obey the cease and desist orders.

ALJ's Decision and Order at 12.

As an initial matter, the Animal Welfare Act leaves no room for discretion regarding the amount of a civil penalty to be assessed for a knowing failure to obey a cease and desist order:

§ 2149. Violations by licensees

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- (b) **Civil penalties for violation of any section, etc.; separate offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court jurisdiction; failure to obey cease and desist order**

Any person who knowingly fails to obey a cease and desist order made by the Secretary under this section shall be subject to a civil penalty of \$1,500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

7 U.S.C. § 2149(b). Effective September 2, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture increased the civil penalty for a knowing failure to obey a cease and desist order from \$1,500 to \$1,650.¹⁴ Therefore, the civil penalty required to be assessed for Mr. Mitchell's 12 knowing failures to obey cease and desist orders issued by the Secretary of Agriculture in *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998), and *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001), is \$19,800. The Administrator, without explanation, recommends that I assess Mr. Mitchell an \$18,800 civil penalty for these 12 violations, which is \$1,000 less than the civil penalty that must be assessed for 12 knowing violations of the cease and desist orders. I reject the Administrator's recommendation that I assess Mr. Mitchell an \$18,800 civil penalty,

¹⁴62 Fed. Reg. 40,924 (July 31, 1997); 62 Fed. Reg. 42,857 (Aug. 8, 1997). (7 C.F.R. § 3.91(b)(2)(v) (2005); 7 C.F.R. § 3.91(b)(2)(ii) (2006)).

and I assess Mr. Mitchell the required \$19,800 civil penalty for 12 knowing failures to obey cease and desist orders entered against him by the Secretary of Agriculture in *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998), and *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001).

Criminal Prosecution of Mr. Mitchell

The instant proceeding is the third administrative proceeding brought under the Animal Welfare Act against Mr. Mitchell. As evidenced in the instant proceeding, the orders issued by the Secretary of Agriculture against Mr. Mitchell in *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998), and *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.), 60 Agric. Dec. 647 (2001), have not deterred Mr. Mitchell from continuing to violate the Animal Welfare Act and the Regulations. If Mr. Mitchell knowingly violates the Animal Welfare Act or the Regulations in the future, I would urge the Administrator to consider referring the matter for criminal prosecution in accordance with 7 U.S.C. § 2149(d).

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Mitchell and Big Cat Encounters, their agents, employees, successors and assigns, directly or indirectly through any corporate or other device, are ordered to cease and desist from further violations of the Animal Welfare Act and the Regulations, including:

- a. exhibiting animals without an Animal Welfare Act license;
- b. offering to exhibit animals without an Animal Welfare Act license;
- c. failing to handle animals, during public exhibition, in such a manner as to allow only minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public; and
- d. failing to provide Animal and Plant Health Inspection Service officials access to facilities, records, and animals.

Paragraph 1 of this Order shall be effective immediately upon service of this Decision and Order on Mr. Mitchell and Big Cat Encounters.

2. Mr. Mitchell and Big Cat Encounters are assessed, jointly and severally, a \$67,000 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

Colleen A. Carroll
United States Department of Agriculture
Office of the General Counsel
1400 Independence Avenue SW.
Room 2343 South Building
Washington, DC 20250-1417

Payment of the civil penalty shall be sent to, and received by, Colleen A. Carroll within 60 days after service of this Order on Mr. Mitchell and Big Cat Encounters.

Mr. Mitchell and Big Cat Encounters shall state on the certified check or money order that payment is in reference to AWA Docket No. 09-0084.

3. Mr. Mitchell is assessed a \$19,800 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

Colleen A. Carroll
United States Department of Agriculture
Office of the General Counsel
1400 Independence Avenue SW.
Room 2343 South Building
Washington, DC 20250-1417

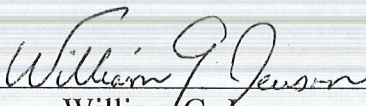
Payment of the civil penalty shall be sent to, and received by, Colleen A. Carroll within 60 days after service of this Order on Mr. Mitchell. Mr. Mitchell shall state on the certified check or money order that payment is in reference to AWA Docket No. 09-0084.

RIGHT TO JUDICIAL REVIEW

Mr. Mitchell and Big Cat Encounters have the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Mr. Mitchell and Big Cat Encounters must seek judicial review within 60 days after entry of the Order in this Decision and Order.¹⁵ The date of entry of the Order in this Decision and Order is December 21, 2010.

Done at Washington, DC

December 21, 2010



William G. Jenson
Judicial Officer

¹⁵7 U.S.C. § 2149(c).